

EXHIBIT P

Roland Fox

Connecticut v Congo

30th November 2006

IN THE UNITED STATES DISTRICT COURT TEXAS
FOR THE DISTRICT OF DELAWARE

-----)
CONNECTICUT BANK OF)
COMMERCE,)
Plaintiff)

v.) Civil Action No.
) 05-726 SLR

THE REPUBLIC OF CONGO)
Defendant)

CMS NOMECCO CONGO, INC.,)
Garnishee)
-----)

Deposition of:

MR. ROLAND FOX

taken at the offices of:

Olswang
90 High Holborn
London
WC1V 6XX
UK

on Thursday, November 30, 2006
commencing at 9:12 a.m.

ORIGINAL

Roland Fox

Connecticut v Congo

30th November 2006

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Roland Fox

Connecticut v Congo

30th November 2006

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Roland Fox

Connecticut v Congo

30th November 2006

INDEX

WITNESS	PAGE
ROLAND FOX	8
DIRECT EXAMINATION BY MR. KAPLAN:	9

Roland Fox

Connecticut v Congo

30th November 2006

1	let me just read this again.	02:45:11
2	No, you're right. You're right, thinking about	02:45:21
3	it.	02:45:24
4	Q. What am I right about, because now I've	02:45:24
5	confused myself.	02:45:27
6	A. You're right that what is happening is that	02:45:28
7	those costs are being treated as a deductible cost prior to	02:45:30
8	the calculation of the royalty. That is what this is	02:45:37
9	saying.	02:45:40
10	Q. And what is the effect of treating that -- of	02:45:41
11	treating it as a deductible cost prior to the calculation of	02:45:45
12	the royalty?	02:45:52
13	A. I would imagine that leads to a smaller	02:45:53
14	royalty delivery to the Government.	02:45:56
15	Q. In --	02:45:59
16	A. Could you just give me a second to just try	02:46:00
17	and understand this carefully? Yeah, it would make a minor	02:46:02
18	change to the amount of royalty oil which the Government	02:46:17
19	takes.	02:46:23
20	Q. Is SNPC authorized to sign off on a reduction	02:46:24
21	in the Government oils royalty?	02:46:27
22	A. It hasn't done that. In fact, it's the party	02:46:30
23	that's saying that they consider -- or they're asking that	02:46:33
24	the -- that CMS examine whether that's appropriate or not.	02:46:37
25	Q. Currently this is how the parties are	02:46:42

Roland Fox

Connecticut v Congo

30th November 2006

1	proceeding though; correct?	02:46:44
2	A. The lifting -- the \$150,000 is a deduction,	02:46:47
3	yes.	02:46:50
4	Q. So the practical effect is that SNPC has	02:46:51
5	signed off on the Government -- on the Government --	02:46:55
6	A. Absolutely not.	02:47:00
7	Q. -- losing a portion?	02:47:01
8	A. Absolutely not.	02:47:03
9	Q. -- of their royalty?	02:47:04
10	A. Absolutely not.	02:47:05
11	Q. Why do you say "absolutely not"?	02:47:07
12	A. Because here SNPC is disputing the right of	02:47:09
13	CMS or asking CMS to consider whether it's appropriate.	02:47:13
14	It's not signing off on it at all.	02:47:16
15	Q. And CMS has done nothing because it's not in	02:47:19
16	their interest to do so; correct?	02:47:21
17	A. That's correct.	02:47:24
18	Q. Just trying to recap. There's an agreement	02:47:52
19	between Congo and CMS with regard to the maritime tax	02:47:55
20	off-set; correct?	02:47:59
21	A. No.	02:48:00
22	Q. I thought we discussed earlier that the	02:48:02
23	maritime tax that CMS indirectly had to pay by virtue of	02:48:04
24	having to pay the shippers, Congo agreed that CMS could take	02:48:13
25	an offtake?	02:48:18

Roland Fox

Connecticut v Congo

30th November 2006

1	A. No. It's an acquiescence is how I described	02:48:19
2	it.	02:48:23
3	Q. What do you mean by "acquiescence"?	02:48:23
4	A. They've gone along with it.	02:48:26
5	Q. You sought their approval for the	02:48:28
6	acquiescence -- and by "you" I mean CMS?	02:48:30
7	A. Sought their approval? I think -- I don't	02:48:38
8	know whether we -- whether CMS sought the approval or not	02:48:42
9	but it happened. My -- my understanding, from what	02:48:45
10	I learned at the time when this acquisition was made, was	02:48:51
11	that the Government considered or elements of the Government	02:48:56
12	considered -- were objecting to the fact that the	02:49:00
13	Hydrocarbons Ministry was receiving too much money; and this	02:49:04
14	was one way of sharing money around the various ministries,	02:49:07
15	and therefore it was acquiesced in without it being any	02:49:11
16	agreement.	02:49:24
17	Q. Are there any other acquiescences between CMS	02:49:37
18	and Congo, as you call them, that I haven't covered?	02:49:42
19	A. I can't think of any at the moment.	02:49:45
20	Q. Reading through the document request	02:49:58
21	responses -- were you involved in this in the preparation of	02:49:59
22	the document request responses?	02:50:03
23	A. Yes.	02:50:05
24	Q. You reviewed them?	02:50:06
25	A. Yes.	02:50:11

Roland Fox

Connecticut v Congo

30th November 2006

1	Q. What about the interrogatory responses?	02:50:11
2	A. Yes.	02:50:13
3	Q. And you reviewed those?	02:50:14
4	A. Yes.	02:50:15
5	Q. The request for admissions as well? You	02:50:16
6	reviewed those?	02:50:18
7	A. Yes.	02:50:19
8	Q. The document requests assert a joint defence	02:50:22
9	privilege. Are you familiar with that?	02:50:27
10	A. What it means?	02:50:29
11	Q. Are you familiar with -- well, yes, do you	02:50:31
12	know what it -- what that means?	02:50:35
13	A. Not entirely, no.	02:50:37
14	Q. What's your understanding of the joint defence	02:50:38
15	privilege?	02:50:41
16	A. "Not entirely" is probably a very bad thing to	02:50:42
17	say. I'm not sure what it does mean. I'm not an expert on	02:50:46
18	legal privilege in the US.	02:50:52
19	Q. Okay. That's fair. Are you aware of the	02:50:53
20	basis for that objection? What is the basis for the	02:51:11
21	objection under the joint defence privilege in --	02:51:14
22	A. Could I see the -- where it is actually --	02:51:17
23	Q. I just want to make sure I focus you before	02:51:19
24	I -- before I give it to you. Just give me a second. The	02:51:22
25	copy at page 3, which is where it is asserted, is missing.	02:52:16

Roland Fox

Connecticut v Congo

30th November 2006

1 Let me see if there's one here. Here we go. I'm just going 02:52:22
2 to read into the record the General Objection from 02:53:02
3 Defendant, CMS Nomeco Congo, Inc.'s, Responses to 02:53:07
4 Plaintiff's First Request for Production. This is on page 2 02:53:12
5 of the document: 02:53:16

6 "CMS objects to each document request to the 02:53:17
7 extent it would require CMS to make or to divulge 02:53:19
8 information protected by the work product doctrine, the 02:53:30
9 attorney/client privilege, the joint defence/common interest 02:53:32
10 privilege and/or any other applicable privilege or 02:53:38
11 protection. To the extent that CMS objects to any document 02:53:43
12 request, for reasons other than privilege, CMS Nomeco 02:53:47
13 objects to any attempt to impose upon it an obligation to 02:53:52
14 privilege long any documents responsive only to the 02:53:53
15 objectionable portion of a request until a reasonable time 02:53:57
16 after CMS Nomeco's other objections may be heard and 02:54:00
17 resolved. CMS Nomeco will produce a log of other privileged 02:54:07
18 documents no later than December 31, 2006 and objects, on 02:54:07
19 relevancy grounds, to any purported requirement that it 02:54:12
20 produce such log sooner." 02:54:15

21 And I apologize I don't have the right one with 02:54:23
22 me. That is -- take on face value that's what's in here, 02:54:26
23 you guys are free to check when you go back. 02:54:29

24 With regard to the joint defence common interest 02:54:32
25 privilege that was asserted, do you know the basis for that 02:54:34

Roland Fox

Connecticut v Congo

30th November 2006

1	objection?	02:54:38
2	A. No, I'm relying on legal advice I got.	02:54:39
3	Q. You're relying on legal advice for making the	02:54:42
4	objection?	02:54:46
5	A. For -- yes.	02:54:47
6	Q. Do you know if you have a joint defence	02:54:48
7	agreement with Congo, as the defendant in this action -- do	02:54:51
8	you know if you have a joint defence agreement with Congo?	02:54:56
9	A. I don't believe we have, no. In fact we	02:54:59
10	don't; I'm sure we don't.	02:55:02
11	Q. I'm sorry?	02:55:04
12	A. I'm sure we don't.	02:55:05
13	Q. You're sure you don't. Do you know of any	02:55:07
14	other joint defence agreements that CMS Nomeco has with	02:55:09
15	anyone associated with the District of Delaware litigation?	02:55:17
16	A. No, there are none.	02:55:22
17	Q. Is there anyone else that we could ask whether	02:55:31
18	or not there's a joint defence agreement in place, such that	02:55:36
19	this objection would be appropriate?	02:55:40
20	MR. LIPE: I object to the form.	02:55:43
21	A. I don't -- I don't believe there is a joint --	02:55:46
22	there's no agreement between us and anybody else for a joint	02:55:49
23	defence.	02:55:52
24	Q. And you would know because the chief legal	02:55:53
25	officer and --	02:55:56

Roland Fox

Connecticut v Congo

30th November 2006

1	A. I should know if there was one, yes.	02:55:57
2	MR. KAPLAN: We'll put this on our list of things	02:56:09
3	to discuss after the deposition. Maybe Mr. --	02:56:11
4	MR. LIPE: There are -- there are no joint defence	02:56:15
5	agreements.	02:56:17
6	MR. KAPLAN: Well, what's the basis for the joint	02:56:18
7	defence privilege assertion?	02:56:19
8	MR. LIPE: First of all, we're not claiming joint	02:56:21
9	defence privilege with regard to any documents generated in	02:56:22
10	connection with the Delaware litigation. Did you hear that?	02:56:24
11	MR. KAPLAN: Yes. Yeah.	02:56:29
12	MR. LIPE: Your document requests seek documents	02:56:32
13	relating to the Texas litigation. The joint defence	02:56:34
14	privilege would apply only to the extent the court would	02:56:37
15	determine that communications generated in connection with	02:56:42
16	the Texas garnishment litigation are discoverable in this	02:56:46
17	case. But there is no joint defence agreement with regard	02:56:50
18	to the Texas litigation either.	02:56:54
19	MR. KAPLAN: Who are the agreements -- who are the	02:56:57
20	communications between that are the -- are potentially the	02:56:59
21	subject of the privilege?	02:57:02
22	MR. LIPE: It would be communications	02:57:06
23	Cleary & Gotlieb lawyers and Vinson Elkins lawyers in	02:57:08
24	connection with the Texas litigation.	02:57:17
25	If you look at the first two requests in your	02:57:26

Roland Fox

Connecticut v Congo

30th November 2006

1 document request, you're seeking documents relating to 02:57:30
2 litigation brought by Af-Cap and any other judgment 02:57:34
3 creditors of the Congo without geographic or time 02:57:38
4 limitation. I interpreted that request as seeking every 02:57:41
5 communication generated in connection with the Texas 02:57:46
6 garnishment actions. 02:57:51

7 MR. KAPLAN: I think this general matter -- the 02:57:53
8 interpretation -- you've broadened the interpretation beyond 02:57:55
9 what the request asks for. 02:58:05

10 MR. LIPE: I'm glad to hear that. Maybe we don't 02:58:07
11 have a dispute then. There are no joint defence documents 02:58:10
12 in connection with the Delaware litigation. 02:58:13

13 MR. KAPLAN: But there -- 02:58:17

14 Q. Mr. Fox, were you aware that there were 02:58:19
15 communications between lawyers for CMS Nomeco and lawyers 02:58:22
16 for the Congo during the Texas litigation? 02:58:27

17 A. Yes. 02:58:31

18 Q. Did you authorize those communications? 02:58:32

19 A. They were carried out by the lawyers. 02:58:34

20 I believe there were communications with the lawyers acting 02:58:52
21 for the claimants as well. 02:58:57

22 Q. What's your basis for saying that there were 02:59:08
23 communications between lawyers acting for the claimants as 02:59:11
24 well? 02:59:14

25 A. My understanding was that, from time to time, 02:59:15

Roland Fox

Connecticut v Congo

30th November 2006

1	Mr. Lipe had spoken to lawyers for the claimants to discuss	02:59:20
2	hearings. That's my understanding.	02:59:25
3	MR. LIPE: Just so there's no confusion, we're not	02:59:35
4	claiming those as privileged, if that's what you're	02:59:37
5	concerned about. I don't think you asked about	02:59:41
6	communications with claimant's lawyers claimed as privilege.	02:59:45
7	That's not the case.	02:59:48
8	MR. KAPLAN: I'm not.	02:59:50
9	Q. Are there any other understandings between	03:00:04
10	CMS, Congo or SNPC, other than those which we've discussed	03:00:09
11	today?	03:00:17
12	A. I can't recollect any.	03:00:17
13	Q. CMS is currently extracting oil under the	03:00:26
14	Marine 1 permit?	03:00:29
15	A. Is currently?	03:00:32
16	Q. Currently extracting oil under the Marine 1	03:00:33
17	permit?	03:00:36
18	A. Correct.	03:00:37
19	Q. Has there ever been a period of time during	03:00:38
20	which -- after the wells were drilled that CMS hasn't	03:00:42
21	extracted oil from the field?	03:00:49
22	MR. LIPE: I object to the form.	03:00:52
23	A. Well CMS were the operator of the Marine 1	03:00:53
24	permit. At some stage after the wells were drilled	03:00:59
25	I suspect they must have been shut in. And, subsequently,	03:01:03

Roland Fox

Connecticut v Congo

30th November 2006

1	when the necessary terminal facilities were prepared then	03:01:06
2	extraction would have started. There may well have been	03:01:10
3	interruptions for production difficulties or the like.	03:01:14
4	Q. But there have been --	03:01:17
5	A. But overall the production has continued since	03:01:19
6	1991.	03:01:23
7	Q. Okay. When was the last royalty lifting	03:01:26
8	taken?	03:01:34
9	A. The last royalty lifting was taken in April of	03:01:39
10	2006. It was more than a royalty lifting, of course,	03:01:42
11	because SNPC's working interest oil was also lifted at the	03:01:54
12	time.	03:01:58
13	Q. Does SNPC always take its interest oil in	03:02:01
14	a lifting at the same time it takes the Congo's royalty	03:02:07
15	lifting?	03:02:12
16	A. Yes. I believe it's obliged that the two	03:02:13
17	things happen simultaneously, as on the date on which these	03:02:15
18	liftings began in kind rather than there being a cash	03:02:21
19	royalty.	03:02:24
20	Q. And when is the next royalty due?	03:02:25
21	A. The next -- we understand that SNPC -- well,	03:02:33
22	SNPC is entitled to take the next lifting. We forecast it,	03:02:35
23	at the moment, some time around the end of December, but	03:02:40
24	SNPC has not nominated a date as yet. It is entitled to the	03:02:44
25	next lifting then, assuming, of course, that it complies	03:02:50